EXHIBIT H

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File Number:

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VIA ELECTRONIC MAIL

Jonathan Gardner
Melissa Nafash
Shannon Tully
Labaton Sucharow
140 Broadway
New York, NY 10005

Re: ***Samsung – Threatened Mass Arbitration Claims***

Counsel:

I write regarding Labaton Sucharow's threat to proceed with the coordinated filing of tens of thousands of individual arbitration demands against Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd. (collectively, "Samsung"). As described in your March 21, 2022 letter, these threatened demands challenge a feature of the Gallery App on Samsung Galaxy devices under the Illinois Biometric Information Privacy Act ("BIPA"). Most recently, you have threatened to initiate 50,000 BIPA claims as early as tomorrow, you claim to have over 70,000 existing clients, and we are aware that you are actively attempting to recruit more, using false, misleading, and disparaging statements.

BIPA applies only to entities who are "in possession" of or who "collect, capture, purchase, receive . . . or otherwise obtain" biometric identifiers and biometric information. 740 ILCS 14/15(a)-(e). The face clustering data in use in Samsung Galaxy devices is neither a biometric identifier or biometric information as those terms are defined in the statute. More fundamentally, as Samsung already has explained in writing and in discussions, Samsung cannot have violated BIPA because Samsung does not "collect, capture, purchase, receive," or "otherwise obtain," nor is it "in possession of," the face clustering data the users' devices generate. Companies that do not and cannot have access to allegedly biometric identifiers and biometric information cannot be liable under BIPA. The fact that Samsung sells to users a device that is capable of generating and storing that data on users' devices does not create liability for Samsung when Samsung cannot access the data at all. *Heard v. Becton, Dickinson & Co.*, 440 F. Supp. 3d 960 (N.D. Ill. Feb. 24, 2020) (dismissing BIPA claim absent allegation of active steps by the defendant to acquire the data at issue); *Jacobs v. Hanwha Techwin Am., Inc.*, 2021 WL 3172967 (N.D. Ill. July 27, 2021) (similar); *see also Hazlitt v. Apple Inc.*, 500 F. Supp. 3d 738 (S.D. Ill. 2020) (denying motion to dismiss where allegation included that defendant could access information). It is the users that are in possession and control of the device with the data.

I attach a sworn declaration of Youngil Shin, Staff Engineer for the Visual Software R&D Group within Samsung Electronics Co., Ltd.'s Mobile Experience Business. This declaration provides additional evidentiary confirmation that Samsung does not have access to or control any of the supposed biometric identifiers or biometric information at issue in your clients' threatened claims. The declaration further confirms that no basis in fact or law exists for the threatened claims.

We have tried to discuss the actual operation of the Gallery App and related face clustering functionality and the substantive problems with the threatened claims. But you have been unwilling to engage in those discussions, instead insisting that you will file thousands of arbitration claims regardless. Despite this, we provide a detailed declaration from a knowledgeable engineer so that there can be no doubt as to the lack of merit of any BIPA claim against Samsung. Proceeding with any BIPA claims against Samsung as threatened would be frivolous and can only be understood to be for the improper purpose of attempting to coerce Samsung to pay tens or hundreds of millions of dollars to avoid the expense of defending baseless claims. This conduct would expose both your firm and your clients to liability to pay for Samsung's fees and costs under the governing Arbitration Agreement, AAA rules, and the law.

Samsung will defend itself rigorously and will pursue its rights, including claims and counterclaims, against all appropriate parties.

Sincerely,

/s/ Randall W. Edwards

Randall W. Edwards
Partner
of O'MELVENY & MYERS LLP

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Attorneys for Defendants Samsung Electronics America, Inc.

DECLARATION OF YOUNGIL SHIN

I, Youngil Shin, declare as follows:

1. I am a Staff Engineer for the Visual Software R&D Group within Samsung Electronics Co., Ltd.'s ("SEC") Mobile Experience Business. In my current role, I am responsible for the research and development of software used in Samsung smart phones and tablets. I have been employed by SEC since August 4, 2011, and have been in my current role since then. Through my various positions with SEC, I have become very familiar with Samsung's image recognition and facial clustering technology used in Samsung Galaxy devices. The statements I make below are based on my personal knowledge, my years of experience working as an employee of SEC, and on information provided to me by others working parallel to me.

2. Samsung's Galaxy devices (including smartphones and tablets) incorporate technology that allows users to take, store and view digital photographs. The devices include a "Face Clustering" capability that applies to photographs stored on the device. This capability on the user's device automatically groups faces from photographs based on identified similarities among data scanned from each photograph, which can then be searched and viewed in convenient groups through the Gallery App installed on the phone. I explain the details of how the face clustering capability operates below.

3. As described in more detail below, the entire Face Clustering process takes place locally on each user's device, and none of the Face Clustering data generated locally on each user's device is stored by Samsung or able to be accessed by Samsung.

The Face Clustering Process

4. When Galaxy owners use their Samsung Galaxy devices to take, download, or otherwise transfer photographs onto the device, those photographs are stored in the device's local memory (either in internal storage or, if the customer has chosen to install one, on external memory devices such as microSD cards).

5. After those photographs are stored in the device's local memory, they are automatically sent to an application on the device known as the "Media Scanner." Upon receipt, the Media Scanner scans the files to identify the file type. If the file is identified as a picture, the Media Scanner forwards notice to a separate application on the device known as the "Customized

Media Provider."

6. The Customized Media Provider is an application on the device that manages all types of media files stored on the device. By design, the Customized Media Provider, and files stored within it, is not accessible to Samsung, either remotely or via direct physical access. Each time the Customized Media Provider receives a notice from the Media Scanner that a new photograph or photographs have been loaded to the Galaxy device, it automatically sends notice to the Content Management Hub for the photograph to be processed.

7. The Content Management Hub is a specialized processing application that is stored locally on the device. By design, the Content Management Hub, and data stored within it, is not accessible to Samsung, either remotely or via direct physical access.

8. When the Content Management Hub receives a photograph from the Customized Media Provider, it prepares the photograph for Face Clustering analysis by uncompressing the file –*i.e.*, rendering the file to its native format. That process allows the Content Management Hub to identify the particular color code of each pixel within the photograph.

9. Once the photograph has been uncompressed and the values for each pixel are identified, the Content Management Hub transfers the photograph to the Face Clustering Image Analysis Engine ("Clustering Engine"), another specialized system application that runs locally on the device. Like the Customized Media Provider and Content Management Hub, the Clustering Engine and the data stored within it are not accessible to Samsung, either remotely or via direct physical access.

10. After receiving the pre-processed photos from the Content Management Hub, the Clustering Engine analyzes the data values to determine, in the first instance, whether the picture contains a human face. If so, the Clustering Engine crops the image to focus on the face and, using what is known as a "convolution neural network" or "CNN," analyzes multiple facial landmarks to align (i.e., straighten) the facial image so that it can be compared at the same angle against other images that are stored locally on the device.

11. Once the face has been aligned, the Clustering Engine converts the consolidated landmark data (i.e., approximately 10,000 RGB values) to "vectors" that are assigned a numerical

value, which is a fraction between 0 and 1 (e.g., 0.01045906) (i.e., vector analysis data).

12. The Clustering Engine then analyzes the vectors to determine if the vector values between the analyzed image and other images stored locally on the device are high enough to "cluster" photographs that are likely to include the same face.

13. The vector values may vary across different images of the same individual. As a result, the data created by the Clustering Engine cannot be used to reconstruct a specific face, and the Clustering Engine cannot recognize specific individuals; the Clustering Engine merely suggests faces that may be grouped based on similar vector values.

14. Once the Clustering Engine has completed its analysis, it forwards the end result (with the vector analysis data removed) of the photograph analysis to the Content Management Hub. This includes location data of each individual face (the location information of each face within an image) and grouping data (that is, which other faces stored locally on the phone each face should be clustered with) (collectively, the Face Clustering data). The Content Management Hub stores the above data locally on the device.

15. The Content Management Hub then forwards the above Face Clustering data of the photograph analysis to the Customized Media Provider.

16. The Gallery App then obtains the above Face Clustering data from the Customized Media Provider.

Users, Not Samsung, Control the Face Clustering Data

17. As noted above, the entire Face Clustering process occurs solely on the user's local device. Face Clustering data and vector analysis data is generated only on the user's device. Samsung has no access to or control over the generation of vector analysis and Face Clustering data on any device. Samsung does not create or engage in the vector analysis of an image or Face Clustering of images, nor does Samsung upload, possess, control, or store that vector analysis or Face Clustering information from users' devices.

18. The Face Clustering engine on the user's local device only compares vector analysis data to that of other images stored locally on that user's device. The comparison process occurs exclusively on the user's device and does not involve any contact with Samsung or any other

outside server or platform. Samsung does not conduct the vector image analysis or Face Clustering, on its servers or otherwise.

19. Vector analysis and Face Clustering data is stored exclusively on the user's local device. Samsung never receives or have access to that data on the user's device. Samsung has designed its devices so that neither Samsung nor third-party app providers can access the vector analysis and Face Clustering data.

20. Galaxy owners may upload images stored on their device to cloud storage outside of the device itself, but any image uploaded to cloud storage does not contain the vector analysis or Face Clustering data.

21. Galaxy owners can delete the Facial Clustering data stored on their phones at any time, either by clearing the cache in their system settings or by resetting the phone to its factory setting.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 5, 2022 in Suwon, Republic of Korea.

신영일

Youngil Shin